



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 19, 1998

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-2776

Dear Mr. McCalla:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119717.

The Natural Resource Conservation Commission (the "TNRCC") received two requests from requestors for the complete file concerning a job posting. Representative samples of the information in the job posting file were submitted to this office for review.¹ You assert that the requested file is protected from disclosure under section 552.103(a) of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex.App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You state that an individual who previously held the job that was posted has filed a racial and sexual discrimination complaint with the Equal Employment Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "TCHR").² This office has stated that a pending EEOC complaint indicates litigation is reasonably

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

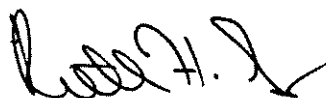
²You submitted complaints filed with the EEOC and the TCHR by two different individuals. We assume one of the complainants is the individual who previously held the posted position.

anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). By showing that complaints filed with the EEOC and the TCHR are pending, you have shown that litigation is reasonably anticipated.

You assert that the job posting file in its entirety is related to the anticipated discrimination litigation, because "the posting has been filled, and the information relating to the former employee's replacement is directly related to the former employee's prima facie case of discrimination." We agree that records concerning the applicants for the position held by the former employee, on their face, are related to the race and sex discrimination complaints. However, you have not explained, nor it is apparent on their face, how the job posting and the listed requirements for the position are related to the discrimination complaint. Thus, you may withhold under section 552.103(a) all information pertaining to applicants for the position and the individual selected for the position, but listed job requirements and the posting itself are not excepted from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119717

Enclosures: Submitted documents

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